C.F. 72.

1928

Department of L R & S'

OFFICE Board of Rev

STATION Chepauk

Mi. **No.** 39 30

Dated 21-11-28

To whom sent		Date	Initial.
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	Signed		
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(SUBJECT.)

Land (S. Kanara) - Karkal Dmc - Cs. 558/28
Warg Claim - Defence - Sanctioned.

Not to be filled in in the case of permanent records.

Ref. on A3- 7573-28.

South Kanara Collector's Office,

Mangalore, Dated, 3rd November, 1928.

A4571

From

G. W. Wells, Esquire, M.A., I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue & Settlement,

Madras.

Sir,

Suits - Karkal - Dt. Munsif's Court - O.S.No.556/28.

The suit has been filed by Bommaya Ajila against the Secretary of State (1st Defendant) and Babanna Sequeira (2nd defendant)

2. The prayer is (1) for a declaration that plots S.Nos. 80/1.2 along with plots 80/3.4.5 of Balkunje village, Mangalore Taluk form part of muli warg No.20 belonging to him by ------ purchase right, (2) for the cancellation of the order of assignment of portions of the plots S.Nos. 80/1 and 2 to the 2nd defendant Babanna Sequeira, (3) for a permanent injunction restraining the defendants from interfering with the enjoyment of the plots by the plaintiff and (4) for other consequencial reliefs.

3. Plots S.No. 80/1 to 5 formed the subject matter in D.R.case No.70/35 on the file of the Tahsildar of Mangalore. In this case the plaintiff urged his warg claim to the plots but the Tahsildar did not admit his warg claim and assigned S.No. 80/1 measuring acres 4.41 to the plaintiff and S.No. 80/2 measuring acres 0.75 to the 2nd defendant on kumaki right.

4. The 2nd defendant Babanna Sequeira appealed to the Revenue Divisional Officer, Mangalore against the assignment of the whole of S.No. 80/1 to the plaintiff and claiming his legitimate portion of kumaki out of it. The warg claim urged

by the plaintiff having been found to be futile, it was equitable to apportion the common kumaki between the plaintiff and the 2nd defendant. The Revenue Divisional Officer accordingly cancelled the assignment of both the plots S.No.80/1 and 2 and ordered the Tahsildar to distribute the land included in the two sub-divisions equally between the plaintiff and the 2nd defendant. Please see his Proceedings D.Dis.267-27, dated 8-4-1927. (S)

5. The plaintiff filed a revision petition before the Collector urging his warg claim in respect of 80/1 and threatening to sue Government unless it was included in his patta after cancelling the Revenue Divisional Officer's order referred to above. The documents produced by the plaintiff did not prove his claim and were also contradictary. There was also no proof of the absolute enjoyment of the plot by the plaintiff. Mr. Gawne accordingly rejected the revision petition in his Proceedings D.Dis.4424-27 dated 17-8-27. M.1-5 cf (W) p35 (W)

6. As a result of the Revenue Divisional Officer's order in appeal referred to above, the Tahsildar assigned S.No.80/1B measuring acres 2,58 to the plaintiff and S.Nos. 80/1A and 80/4 (original 80/2) measuring in all acres 2.58 to the 2nd defendant in D.R.512/36 dated 19-11-27. p1 (B).

7. The plaintiff thereafter again threatened to sue Government unless his warg claim was admitted. As the warg claim which was investigated more than once was found to be futile and as the land which was common kumaki was equitably apportioned between the plaintiff and the 2nd defendant, the plaintiff could have no cause of action against Government. His suit notice was therefore simply recorded in this office D.Dis. 4994-28, dated 11-6-28. The plaintiff has now actually filed the suit. M.1-3 cf. (E) (E) p1 M.f.

8. The plaintiff's warg claim is long time barred and also groundless. The suit is therefore frivolous and vexatious. The Civil Court has no jurisdiction to question the orders passed by the Revenue Officers within their jurisdiction. I request therefore that the Board may be pleased to sanction the defence of the suit and approve the enclosed draft written statement prepared by the Vakil, Karkal and slightly modified by the Government Pleader, Mangalore. p 4 cf.

9. The notice of suit was received from the Dt. Munsif on 1-9-28. The suit stands posted to 11-12-1928.

10. The records noted in the margin are enclosed.

1. Copy of plaint.
2. Copy of written statement.
3. D.R.70/35 of Mangalore Tahsildar.
4. D.R.512/36 - do -
5. Mangalore Divisional Officer's Dis file 267-29/8-4-27.
6. Huzur Dis file D 4424-27/17-8-27.
7. - do - D 4994-28/11-6-28.

Your obedient servant,

For Collector.

5.11.28

In the Court of the Dt. Munsif of Karkal. (4)

O.S. No. 550/ 28.

Kavathar Bommaya Ajila. ... Plaintiff

The Secretary of State for India and another. ... Defendants.

Written statement of 1st defendant under Order VIII Rule 1 of C.P.C.

The above named 1st Defendant states as follows:-

1. His address for service of processes is that of the Collector of South Kanara, Mangalore or that of his Vakil Mr. K.S.Bhat of Karkal.

2. This defendant does not admit that S.Nos.80/1,2,3,4 & 5 of Balkunje village are plots comprised in the darkhast assignment of 30-6-1871 or that they were included as part of muli warg No.20 of Balkunje in the kudtala of Linga Manayi or that they had been in the enjoyment on warg right of the said Linga Manayi, the Admar Swami or plaintiff and puts plaintif to the strict proof of these allegations. The Revenue authorities rightly rejected plaintiff's warg claim in respect of the suit plots, the same having been disposed of under the ordinary darkhast rules.

3. The land having been demarcated as assessed Government waste at the last settlement, plaintiff's present claim is in any case barred by limitation.

4. The plaintiff having himself obtained a portion of the suit S.No. under the darkhast rules and got it included in his patta is now estopped from putting forward his alleged warg title in respect of the rest.

5. This defendant admits receipt of the notice of suit; but as plaintiff did not state any new facts, the same was recorded.

6. Plaintiff's suit for a mere declaration and injunction without claiming possession is opposed to Section 42 of the Specific Relief Act and is not maintainable.

p 549 of Act vol II

7. Plaintiff is not entitled to any relief. Prays therefore that the suit may be dismissed with costs.

5

In the Court of the District Munsif, Karkal.

O.S.No.556 of 1928.

Kavathar Bommaya Ajla. Plaintiff.

Versus

The Secretary of State for India in Council and another. Defendants.

Plaint under rules 1 to 6, order 7 of Act V of 1908.

Dated 12.8.1928.

Plaintiff begs to state as follows:-

1. Bommaya Ajla, nephew of Doomappa Ajla, Ryot, Mangalore Taluk, Puttur magne, Kavathar village. Plaintiff.

Processes for service on the plaintiff may be addressed as above.

2. (1) The Secretary of State for India in Council.

(2) Babanna Sequeira, son of Pors Sequeira, Ryot, said Taluk, Balkunje village. Defendants.

3. (a) Lands subdivided as S.Nos. 80 1.2.3.4.5 at the Settlement in Balkunje village situated within the Mulki Registration Sub District were those assigned by the Tahsildar of Mangalore on 30.6.1871 and added on to muli warg No.20 of the said Balkunje village and included in the kudtala of one Lingu Manai of the said muli warg No.20. The land was thus in the occupation and enjoyment of the said Lingu Manai. This land along with other property having been alienated by the Swamier of Admar Mutt, it was subsequently in the occupation and enjoyment of the said Swamier who in his turn having sold it to the plaintiff, it is now in the enjoyment and occupation of the plaintiff. The plaintiff came to know that at the Settlement the said plots were left out to be included in his patta No.31. The plaintiff, therefore, applied to the Tahsildar of Mangalore on 27th July 1925 for their inclusion in patta. Though the Revenue Inspector who held enquiry into this petition which was dealt with in D.R. No.70/35 was satisfied about the plaintiff's warg claim to the

plots and reported accordingly, the Tahsildar left unassigned Sub-division 3 for the use of the Balkunje Church as agreed to by the plaintiff, assigned on darkhast Sub-divisions 4 & 5 to others, and Sub-division 2 to the 2nd defendant and the remaining Sub-division 1 to the plaintiff on 30.6.1926. In the appeal filed by the 2nd defendant against this order, it was decided on 8.4.1927 to give half the said plot (Sub-division 1) to the 2nd defendant. The revision petition filed by the plaintiff against this appeal order was rejected on 17.8.1927.

D3(G)

D1(S)

D35(N)

(b) As the said plots really form the plaintiff's warg land and are in the plaintiff's enjoyment, the plaintiff filed a suit notice under Sec.80 C.P.C. on 6.6.1928. As he did not get any relief thereby, the plaintiff is constrained to file this suit to obtain the following reliefs:-

4. The cause of action for this suit arose on 17.8.1927 in the said Balkunje village within the jurisdiction of this Court.

5. The relief claimed in this suit is valued at Rs.49-0-0.

6. Reliefs claimed

The defendants may be summoned and examined.

I. For reasons explained above, it may be declared that plots S.Nos. 80 1 & 2 of Balkunje village form part of darkhast land added on to muli warg No.20 of the said village as stated above. that they belong to the plaintiff and are in his enjoyment. The order of assignment of land ~~to the 2nd~~ D3 out of these two in favour of the 2nd defendant may be cancelled, and the land ordered to be included in the plaintiff's patta No.31 of Balkunje village and the patta amended accordingly and a decree of mandatory injunction passed against the 1st defendant.

For purposes of court fee, the assessment of the said property is Rs.2-9-0. Five times this assessment viz. Rs.12-13-0. The higher value. 24- 0- 0

II. For a decree granting a permanent injunction against the defendants from interfering

in any way with the plaintiff's possession of the land and declaring that the darkhast order for portions of the said S.Nos. 80 1.2 in favour of the said 2nd defendant is null and void and cannot prejudice the interests of the plaintiff. The amount for calculating the Court fee 25- 0- 0

Total 49- 0- 0

III. For directing the defendants to pay to the plaintiff the costs of this suit with interest at 6% from this date till payment.

IV. Plaintiff also prays that other reliefs claimed by him and which appear fit to the Court on a consideration of the facts of this case and not injurious to the plaintiff may also be decreed in this judgment itself.

No documents have been produced with the plaint.

Ag Date 11.12.28

R. F. XXII-A-19.—22,004 1-2-28. (6)

Subject.— Suits (S. Kanara) - Karkal Dmc - O.S. 556/28 - warg claim - Defence - Sanctioned.

FOR MEMBER ?
S
AJ.

READ AGAIN B. P. No. _____ dated _____ 192 .

" " " _____ , " _____ 192 .

READ ALSO :—

Register No. A/457/28, From the Q _____, No. _____, dated _____ 192 .

" _____ " " " _____, " _____, " _____ 192 .

" " _____ " " " _____, " _____, " _____ 192 .

RESOLUTION. (This) No. 3930, dated 2/11 192 .

The Board sanctions the defence of the suit and approves the draft written statement submitted by the Collector subject to the following modifications :-

p 4 cf.

(i) Add the following at the end of para 4 :-

p 4 cf.

"Civil Courts have no jurisdiction to question the orders passed by Rev. Officers acting within the ~~jurisdiction~~ scope of their authority."

(ii) Insert the following as para 7 and renumber the

existing paragraph 7 as para no 8:-

"This defendant denies the
"truth of such of the allegations
"in the plaint as are not expressly
"admitted herein and puts the
"plaintiff to strict proof of the
"same"

20.11.24

19.11.2024

Civil Kanungo

To the Collector of Kan
Tumkur